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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,006	03/28/2002	Alexander Pilger	1454.1124	7148

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EXAMINER	
AVELLINO, JOSEPH E	
ART UNIT	**PAPER NUMBER**
2143	

DATE MAILED: 06/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/018,006	PILGER ET AL.	
	Examiner	Art Unit	
	Joseph E. Avellino	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 May 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *7-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *7-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 7-15 are presented for examination; claim 7 independent.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 7-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Ellington, Jr. et al. (USPN 6,175,569) (hereinafter Ellington).

3. Referring to claim 7, Ellington discloses a communication system utilizing a network (Figure 1), comprising:

a first computer (i.e. originating LAN station) connected (the Office takes the term "connected" to mean logically connected, such as a computer behind a firewall in a LAN, since it is still able to connect to other computers on the ATM network, it is considered connected to the network) to the network 10 (Figure 1) including an access unit (incorporated into the originating LAN station) used to determine predetermined QoS features for interaction with the network (col. 5, lines 57-60); and

a second computer (i.e. LAN/ATM Interface Device) connected to the network 10 (Figure 1), to administer to the QoS features of the access unit (col. 6, line 66 to col. 7, line 12).

4. Referring to claim 8, Ellington discloses the network is the Internet (the Internet is a connection of interconnected networks able to allow various LAN's to communicate with one another, such functionality is found in the ATM network 10 since it connects the different LAN networks 18,24 (Figure 1) together (Figure 1, ref. 10).

5. Referring to claim 9, Ellington discloses the access unit is an autonomous device (i.e. it is a originating LAN station, which is considered an autonomous device since it creates QoS parameters independent of any other computing equipment (col. 5, lines 57-60; Figure 1, col. 4, lines 45-62).

6. Referring to claim 10, Ellington discloses the access unit is a plug-in device for the first computer (the Office takes the term "plug-in device" to be broadly construed as "a device which can be connected to a computer" such as the LAN NIC (Network Interface Card) inherently inserted to the LAN station, without this LAN NIC, the computer would not be able to communicate with the network (col. 5, lines 57-60; Figure 1, col. 4, lines 45-62).

7. Referring to claim 11, Ellington discloses the access unit is a processor of the first computer programmed to determine predetermined QoS features for interaction with the network (col. 5, lines 57-60).

8. Referring to claim 12 and 13, it is inherent that the second computer of Ellington (i.e. LAN/ATM Interface Device 12, Figure 1) is assigned to an Internet service provider since it provides service to the LAN 18 since without being assigned as a service provider, the device 12 would not be able to provide service to the LAN.

9. Referring to claim 14, Ellington discloses the QoS features are called up dynamically in the access unit (the Office takes the term "called up" as created) (col. 5, lines 56-67).

Claim Rejections - 35 USC § 103

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellington.

11. Ellington discloses the invention substantively as described in claim 7. Ellington does not specifically state that converting between a first protocol and a second protocol is effected in the access unit. However since it is inherent that there must be a plug-in NIC for the LAN (see rejection for claim 10) there must be a protocol conversion between the internal bus communication logic (in common PC's it is the PCI protocol) to the protocol of the LAN (in Ellington's case, Token Ring). By this rationale it would be

obvious to one of ordinary skill in the art to assume the conversion between PCI and Token Ring is effected by the access unit since it will allow the computer to access the LAN.

Response to Amendment

12. The Office has considered the new title and is clear and descriptive. The Objection to the specification is withdrawn.

13. The Office has considered the amendment to claim 12. The rejection under 35 USC 112, second paragraph is withdrawn.

Response to Arguments

14. Applicant's arguments filed May 11, 2005 have been fully considered but they are not persuasive.

15. In the remarks, Applicant argues, in substance, that (1) Ellington does not disclose two separate computers, one to determine the QoS and one to administer the QoS, (2) Ellington does not disclose an access unit that is an autonomous device, (3) Ellington does not disclose a plug-in device for the first computer, (4) Ellington does not disclose a processor programmed to determine the QoS features for interaction with the network, (5) Ellington does not disclose a second computer is used to administer the QoS features, and (6) Ellington does not disclose an access unit.

16. As to point (1) Applicant is incorrect in its rationale. Ellington discloses that the LAN workstation determines the QoS for the packet to be sent over the ATM network, this QoS is then administered (i.e. carried out/enforced, etc.) by the LAN/ATM interface device, which, as Applicant stated "looks like any other LAN station to the LAN" (col. 6, lines 9-10). Therefore two separate computers are utilized, one to determine a predetermined QoS, and another to administer.

17. As to point (2), Applicant uses broad language when using the phrase "autonomous device" which can be construed in the art to mean "capable of acting independently of another device". The access unit of the LAN device (i.e. a NIC card) operates independently of the PC and transmits data without the PC requiring to do the transmission. By this rationale, the rejection is maintained.

18. As to point (3) As shown in ¶ 10, a LAN NIC card is a plug-in device for a computer.

19. As to point (4) As shown in ¶ 11, the processor of the first computer determines a predetermined QoS.

20. As to point (5) this argument was addressed in the response to point (1).

21. As to point (6) this argument was addressed in the response to point (2).

Conclusion

22. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

23. Applicant employs broad language, which includes the use of word, and phrases, which have broad meanings in the art. In addition, Applicant has not argued any narrower interpretation of the claim language, nor amended the claims significantly enough to construe a narrower meaning to the limitations. As the claims breadth allows multiple interpretations and meanings, which are broader than Applicant's disclosure, the Examiner is forced to interpret the claim limitations as broadly and as reasonably possible, in determining patentability of the disclosed invention. Although the claims are

interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir.1993). Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response, and reiterates the need for the Applicant to more clearly and distinctly, define the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (571) 272-3905. The examiner can normally be reached on Monday-Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JEA
June 6, 2005

WILLIAM C. VAUGHN, JR.
PRIMARY EXAMINER